

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAURICE McCURDY,

Plaintiff,

v.

S. JOHNSON,

Defendant.

Case No. 2:08-cv-01767-MMD-PAL

ORDER

(Plf.'s Motion for Entry of Clerk's Default –
dkt. no. 54)

Before the Court is Plaintiff Laurice McCurdy's Motion for Entry of Clerk's Default. (Dkt. no. 54.) McCurdy filed this Motion seeking entry of Clerk's default, noting that Defendant Officer S. Johnson failed to reply within thirty (30) days from the Court's December 11, 2012, Order to Show Cause. On February 19, 2013, Johnson filed a Response to McCurdy's Motion, and requested 30 days from the time of his filing to file a responsive pleading.

Under Fed. R. Civ. P. 55(a), the Clerk must enter a default "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, that failure is shown by affidavit or otherwise." Here, the Clerk already entered default against Johnson on April 27, 2012. (See dkt. no. 34.) Although the Court denied Plaintiff's first Motion for Default Judgment (see dkt. no. 38), the entry of default remains in this case, and McCurdy's latest motion is duplicative. Furthermore, Johnson's Response is his first filing in this Court, and represents an intent to defend this suit. Accordingly, entry of default in this matter is inappropriate.

1 Accordingly, IT IS HEREBY ORDERED that Plaintiff Laurice McCurdy's Motion for
2 Entry of Clerk's Default (dkt. no. 54) is DENIED. Defendant Officer S. Johnson shall
3 have 30 days from the date of his Response (dkt. no. 55) to file a responsive pleading.

4 IT IS SO ORDERED.

5 DATED this 27th of February 2013.

6
7 

8 MIRANDA M. DU
9 UNITED STATES DISTRICT JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28